**EXPLANATORY DOCUMENT TO**

**THE PUBLIC BODIES (ABOLITION OF THE AIRCRAFT AND SHIPBUILDING INDUSTRIES ARBITRATION TRIBUNAL) ORDER 2013**

**2013 No. ****

**1.** This explanatory document has been prepared by the Department for Business, Innovation and Skills ('the Department') and is laid before Parliament under section 11(1) of the Public Bodies Act 2011 (the 'PBA 2011').

## 2. Purpose of the Instrument

2.1 This instrument abolishes the Aircraft and Shipbuilding Industries Arbitration Tribunal ('the Tribunal').

## 3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

## 4. Legislative Context

4.1 The Government is proposing to use the powers in the PBA 2011 to abolish the Tribunal. Section 1 of the PBA 2011 permits a Minister to abolish by order a body or office specified in Schedule 1. The Tribunal is specified in Schedule 1.

4.2 The Tribunal was established by section 42 of the Aircraft and Shipbuilding Industries Act 1977 ('the ASIA 1977'). Legislation is required to abolish the Tribunal. The proposal to abolish the Tribunal was announced as part of the Cabinet Office's Public Bodies Review on 14 October 2010.

4.3 As required by sections 9 and 10 of the PBA 2011, the UK Government is seeking consent to this order from, or has consulted with, each devolved administration, as appropriate.

4.4 This order will not be made until consent is obtained from the Northern Ireland Assembly (in accordance with section 9(3) of the PBA 2011). The consent requirement in section 9(3) applies because this order makes provision (a) which would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of the Assembly and (b) which modifies the functions of a person within section 9(4) of the PBA 2011.

4.5 The Tribunal is not an excepted or reserved matter within the Northern Ireland Act 1998. The abolition of the Tribunal in Northern Ireland by this order falls within the legislative competence of the Northern Ireland Assembly.

4.6 This order also modifies the functions of a person within section 9(4) of the PBA 2011. The repeal of sections 42(2A) and 42(13) of the ASIA 1977

modifies the functions of the Lord Chief Justice of Northern Ireland, who is a person exercising public functions in relation to a transferred matter (under section 9(4)(e) of the PBA 2011). Furthermore the repeal of Schedule 7 to the ASIA 1977 modifies the functions of the Department of Justice in Northern Ireland, which is a Northern Ireland Department within section 9(4)(d) of the PBA 2011, in relation to rule making powers for Tribunal proceedings.

4.7 Scottish Ministers have been consulted on the proposal in accordance with section 10(1)(c) of the PBA 2011. The consultation requirement in section 10(1)(c) of the PBA 2011 applies because: (a) the proposal relates to the ability to make rules for the Tribunal under Schedule 7 to the ASIA 1977, in relation to which the Scottish Ministers exercise functions and (b) the consent of the Scottish Parliament is not required under section 9 of the PBA 2011.

4.8 The consent of the Scottish Parliament is not required under section 9 of the PBA 2011 because: (a) this order does not make provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament and (b) even though this order modifies the functions of the Scottish Ministers, the exception in section 9(2) of the PBA 2011 applies as this order abolishes a function of the Scottish Ministers which relates to a body to be abolished under section 1 of the PBA 2011.

4.9 The requirement in section 10(1)(e) of the PBA 2011 to consult Welsh Ministers does not apply as this order does not relate to any matter, so far as applying in or as regards Wales, in relation to which the Welsh Ministers exercise functions. Welsh Ministers have nevertheless been consulted on this proposal.

4.10 This order abolishes the Tribunal from the day after the day on which this order is made. This order makes consequential amendments and an amendment to Schedule 1 to the PBA 2011.

4.11 The Tribunal has no property, rights or liabilities. Therefore a transfer scheme under section 23 of the PBA 2011 is not required.

4.12 Section 1 of the ASIA 1977 established British Shipbuilders. British Shipbuilders is also being abolished by an order to be made under the PBA 2011. Both the British Shipbuilders order and this order are being laid in Parliament at the same time. However the orders are not dependent on each other so have not been combined in an omnibus order.

## 5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

## 6. European Convention on Human Rights

6.1 Michael Fallon MP, Minister of State for Business and Enterprise has made the following statement regarding Human Rights:

"In my view the provisions of the Public Bodies (Abolition of the Aircraft and Shipbuilding Industries Arbitration Tribunal) Order 2013 are compatible with the Convention rights."

## 7. Policy background

7.1 The Tribunal was established to determine any question or dispute which was expressly required by the ASIA 1977 to be subject to arbitration. The Tribunal was formed in 1978 and considered two applications. One from John Anthony Gardiner, the Stockbrokers' representative in the case of Cammell Laird Shipbuilders Limited, and one from David Douglas Rae Smith on behalf of Vickers Limited's auditors. The Tribunal completed its determination of both cases by 1981 and has not met since.

7.2 The Tribunal has been defunct for 30 years. It has completed its work and no further cases will need to be considered by it. Legislation is required to abolish the Tribunal. Its abolition is a deregulatory measure and will not impact on business or generate any savings. The PBA 2011 is seen as an appropriate and effective vehicle for abolishing the Tribunal.

Section 8 of the PBA 2011

7.3 Section 8 of the PBA 2011 states that a Minister may make an order under the PBA 2011 only where they consider the order serves the purpose of improving the exercise of public functions, having regard to efficiency, effectiveness, economy and securing appropriate accountability to Ministers. Having considered these factors, the Minister considers that abolishing the Tribunal provides the opportunity to tidy up the regulatory landscape and serves the purpose of improving the exercise of public functions.

7.4 Section 8(2) of the PBA 2011 provides that a Minister may make an order under sections 1 to 5 only if the Minister considers that—

(a) the order does not remove any necessary protection, and

(b) the order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

7.5 The Minister considers that the conditions in section 8(2) of the PBA 2011 are satisfied in respect of this order. The Tribunal has been defunct since 1981. It does not have any employees, receive any funding or have any assets. Moreover the objectives of setting up the Tribunal have been completed by the conclusion of the two applications made to the Tribunal. After a 30 year time lapse there are no further applications for the Tribunal to consider. Abolition of the Tribunal will not remove any necessary protection and will not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

Interest in the Houses of Parliament

7.6 During the passage of the PBA 2011 through Parliament, the Tribunal was specifically referred to on one occasion. On 1 December 2010, during the PBA's passage through the House of Lords, Lord Rosser tabled an amendment to remove the Tribunal from Schedule 1 to the Bill. Following Lord Taylor of Holbeach's response to the questions raised, during which Lord Taylor stated that the Tribunal was redundant and had no standing costs or employees, Lord Rosser withdrew the amendment.

## 8. Consultation outcome

8.1 A six week public consultation on the proposal to abolish the Tribunal was launched on 2 February 2012 and closed on 15 March 2012. The scope of the consultation was narrow so a focused and targeted consultation was considered appropriate. The consultation document was made widely available to all interested stakeholders and the wider public on the Department website. The Department also sent the consultation document directly to the devolved administrations, BAE Systems, the four former British Shipbuilders' shipyards still in existence and the Shipbuilders and Shiprepairers Association (who distributed it to its members).

8.2 The Department received two responses to the consultation. Both responses supported the proposed policy option to abolish the Tribunal.

8.3 The Government's formal response to the consultation has been published on the Department website at: www.bis.gov.uk/consultations/.

8.4 One response asked whether consultation was required at all and whether the ASIA 1977 would be repealed in its entirety. These issues are addressed in the Government response to the consultation and further clarification is provided here.

8.5 There is a general expectation for the Government to consult on the abolition of all public bodies, even when they are defunct.

8.6 The Government originally intended to repeal the ASIA 1977 in its entirety through this order and the British Shipbuilders order (referred to in paragraph 4.12 of this explanatory document). However, it is now thought more appropriate to repeal the provisions of the ASIA 1977 that relate to British Aerospace in separate legislation.

## 9. Guidance

9.1 Not applicable.

## 10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument.

## 11. Regulating small business

11.1 The legislation does not apply to small business.

## 12. Monitoring & Review

12.1 This order abolishes the Tribunal so a review is not necessary.

## 13. Contact

13.1 Peter Joyce at the Department for Business, Innovation and Skills Tel: 020 7215 1165 or email: peter.joyce@bis.gsi.gov.uk can answer any queries regarding the instrument.